

AMENDED IN SENATE JUNE 15, 2016

AMENDED IN ASSEMBLY MARCH 31, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 1836**

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**Introduced by Assembly Member Maienschein**  
**(Coauthor: Assembly Member Cristina Garcia)**  
(Coauthor: Senator Wieckowski)

February 9, 2016

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An act to ~~amend Sections 5350.2, 5352, 5354, and 5360 of~~ *add Section 5350.5* to the Welfare and Institutions Code, relating to conservatorships.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1836, as amended, Maienschein. Mental health: ~~conservatorship hearings;~~ *referral of conservatees.*

Existing law provides a procedure for the appointment of a conservator for a person who is determined to be gravely disabled as a result of a mental disorder or an impairment by chronic alcoholism, and requires an officer, including a county public guardian or a county mental health program, to conduct a conservatorship investigation and render a written report to the court of his or her investigation. Under existing law, a professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment for a gravely disabled person may recommend a conservatorship for that person, and the agency is required to disclose any records or information that may facilitate an investigation. Existing law requires the officer providing conservatorship investigation, when he or she concurs with the recommendation of the professional person or facility, to petition the

superior court in the patient's county of residence for a conservatorship. *alcoholism. Existing law authorizes certain persons to recommend conservatorship of an individual under his or her care to the officer providing conservatorship investigation in the county of the individual's residence, as specified.* Existing law also provides for the establishment of a conservatorship for a person who is unable to properly provide for his or her personal needs or is substantially unable to manage his or her finances.

This bill would authorize the court, if a conservatorship has already been established under the Probate Code, ~~and after a hearing attended by the conservatee, unless he or she waives presence, and the conservatee's counsel, to recommend an investigation from the officer providing conservatorship investigation if the court, in consultation with a licensed physician or psychologist, as specified, providing comprehensive evaluation or intensive treatment, determines, in a specified proceeding, that the conservatee may be to refer the conservatee for an assessment by the local mental health system or plan to determine if the conservatee has a treatable mental illness, including whether the conservatee is~~ gravely disabled as a result of a mental disorder or impairment by chronic ~~alcoholism~~ *alcoholism*, and is unwilling to accept, or is incapable of accepting, treatment voluntarily. The bill would also require the court to appoint counsel to a conservatee if he or she cannot afford counsel. The bill would require ~~the officer providing conservatorship investigation to petition the superior court in the patient's county of residence to establish conservatorship if he or she concurs with the recommendation of the professional person providing comprehensive evaluation or intensive treatment or determines after conducting the investigation recommended by the court that the person is gravely disabled, and to file a copy of his or her report with the court. The bill would require a conservator to disclose any records or information that may facilitate the investigation. The bill would also make conforming changes: the local mental health system or plan to file a copy of the evaluation with the court that made the referral.~~

~~By expanding the duties of the county officer providing conservatorship investigation, increasing county duties,~~ this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 5350.2 of the Welfare and Institutions~~  
2     ~~Code is amended to read:~~  
3     ~~5350.2. Reasonable attempts shall be made by the county~~  
4     ~~mental health program to notify family members, or any other~~  
5     ~~person designated to receive notice by the person for whom~~  
6     ~~conservatorship is sought, of the time and place of the~~  
7     ~~conservatorship hearing. The person for whom the conservatorship~~  
8     ~~is sought shall be advised by the facility treating the person, or by~~  
9     ~~the court in a proceeding under the Probate Code if the~~  
10    ~~conservatorship investigation order was made pursuant to~~  
11    ~~subdivision (c) of Section 5352, that he or she may request that~~  
12    ~~information about the time and place of the conservatorship hearing~~  
13    ~~not be given to family members if the proposed conservator is not~~  
14    ~~a family member. The request shall be honored by the mental~~  
15    ~~health program. Neither this section nor Section 5350 shall be~~  
16    ~~interpreted to allow the proposed conservatee to request that a~~  
17    ~~proposed conservator not be advised of the time and place of the~~  
18    ~~conservatorship hearing.~~  
19    ~~SEC. 2. Section 5352 of the Welfare and Institutions Code is~~  
20    ~~amended to read:~~  
21    ~~5352. (a) If the professional person in charge of an agency~~  
22    ~~providing comprehensive evaluation or a facility providing~~  
23    ~~intensive treatment determines that a person in his or her care is~~  
24    ~~gravely disabled as a result of mental disorder or impairment by~~  
25    ~~chronic alcoholism and is unwilling to accept, or incapable of~~  
26    ~~accepting, treatment voluntarily, he or she may recommend~~  
27    ~~conservatorship of the person to the officer providing~~  
28    ~~conservatorship investigation of the person's county of residence~~  
29    ~~before admitting the person as a patient in the facility.~~  
30    ~~(b) The professional person in charge of an agency providing~~  
31    ~~comprehensive evaluation or a facility providing intensive~~

1 treatment may recommend conservatorship for a person without  
2 the person being an inpatient in the facility if both of the following  
3 conditions are met:

4 (1) The professional person or another professional person  
5 designated by him or her has examined and evaluated the person  
6 and determined that the person is gravely disabled.

7 (2) The professional person or another professional person  
8 designated by him or her has determined that future examination  
9 on an inpatient basis is not necessary for a determination that the  
10 person is gravely disabled.

11 (e) (1) If a conservatorship has already been established under  
12 the Probate Code, the court, in a proceeding under the Probate  
13 Code, after an evidentiary hearing attended by the conservatee,  
14 unless the conservatee waives presence, and the conservatee's  
15 counsel, may recommend an investigation from the officer  
16 providing conservatorship investigation in the person's county of  
17 residence if the court, in a proceeding under the Probate Code, in  
18 consultation with a licensed physician or licensed psychologist  
19 satisfying the conditions of subdivision (e) of Section 2032.020  
20 of the Code of Civil Procedure providing comprehensive evaluation  
21 or intensive treatment, determines, based on evidence presented  
22 to the court, including medical evidence and an examination of  
23 the conservatee, that the conservatee may be gravely disabled as  
24 a result of a mental disorder or impairment by chronic alcoholism  
25 and is unwilling to accept or is incapable of accepting treatment  
26 voluntarily. If the conservatee cannot afford counsel, the court, in  
27 a proceeding under the Probate Code, shall appoint counsel for  
28 him or her.

29 (2) The officer providing conservatorship investigation shall  
30 file a copy of his or her report with the court making the  
31 recommendation for conservatorship in a proceeding under the  
32 Probate Code.

33 (d) If the officer providing conservatorship investigation concurs  
34 with the recommendation of the professional person, pursuant to  
35 subdivision (a) or (b), or determines after conducting the  
36 investigation recommended by the court pursuant to subdivision  
37 (e) that the person is gravely disabled, he or she shall petition the  
38 superior court in the patient's county of residence to establish  
39 conservatorship.

1     ~~(e) If temporary conservatorship is indicated, that fact shall be~~  
2     ~~alternatively pleaded in the petition. The officer providing~~  
3     ~~conservatorship investigation or other county officer or employee~~  
4     ~~designated by the county shall act as the temporary conservator.~~

5     ~~SEC. 3. Section 5354 of the Welfare and Institutions Code is~~  
6     ~~amended to read:~~

7     ~~5354. (a) The officer providing conservatorship investigation~~  
8     ~~shall investigate all available alternatives to conservatorship and~~  
9     ~~shall recommend conservatorship to the court only if no suitable~~  
10    ~~alternatives are available. The officer shall render to the court a~~  
11    ~~written report of investigation before the hearing. The report to~~  
12    ~~the court shall be comprehensive and shall contain all relevant~~  
13    ~~aspects of the person's medical, psychological, financial, family,~~  
14    ~~vocational, and social condition, and information obtained from~~  
15    ~~the person's family members, close friends, social worker, or~~  
16    ~~principal therapist. The report shall also contain all available~~  
17    ~~information concerning the person's real and personal property.~~  
18    ~~The facilities providing intensive treatment or comprehensive~~  
19    ~~evaluation shall disclose any records or information that may~~  
20    ~~facilitate the investigation. If the recommendation for~~  
21    ~~conservatorship was made pursuant to subdivision (e) of Section~~  
22    ~~5352, the conservator in a proceeding under the Probate Code shall~~  
23    ~~disclose any records or information that may facilitate the~~  
24    ~~investigation. If the officer providing conservatorship investigation~~  
25    ~~recommends against conservatorship, he or she shall set forth all~~  
26    ~~alternatives available. A copy of the report shall be transmitted to~~  
27    ~~the individual who originally recommended conservatorship, or,~~  
28    ~~in a proceeding under the Probate Code, to the court that originally~~  
29    ~~recommended conservatorship, to the person or agency, if any,~~  
30    ~~recommended to serve as conservator, and to the person~~  
31    ~~recommended for conservatorship. The court may receive the~~  
32    ~~report in evidence and may read and consider the contents thereof~~  
33    ~~in rendering its judgment.~~

34    ~~(b) Notwithstanding Section 5328, when a court with jurisdiction~~  
35    ~~over a person in a criminal case orders an evaluation of the person's~~  
36    ~~mental condition pursuant to Section 5200, and that evaluation~~  
37    ~~leads to a conservatorship investigation, the officer providing the~~  
38    ~~conservatorship investigation shall serve a copy of the report~~  
39    ~~required under subdivision (a) upon the defendant or the~~  
40    ~~defendant's counsel. Upon the prior written request of the~~

~~defendant or the defendant's counsel, the officer providing the conservatorship investigation shall also submit a copy of the report to the court hearing the criminal case, the district attorney, and the county probation department. The conservatorship investigation report and the information contained in that report, shall be kept confidential and shall not be further disclosed to anyone without the prior written consent of the defendant. After disposition of the criminal case, the court shall place all copies of the report in a sealed file, except as follows:~~

~~(1) The defendant and the defendant's counsel may retain their copy.~~

~~(2) If the defendant is placed on probation status, the county probation department may retain a copy of the report for the purpose of supervision of the defendant until the probation is terminated, at which time the probation department shall return its copy of the report to the court for placement into the sealed file.~~

~~SEC. 4. Section 5360 of the Welfare and Institutions Code is amended to read:~~

~~5360. (a) The officer providing conservatorship investigation shall recommend, in his or her report to the court, for or against imposition of a disability set forth in Section 5357 on the basis of the determination of the professional person who recommended conservatorship pursuant to subdivision (a) or (b) of Section 5352, or the determination of the physician or psychologist who presented medical evidence to the court pursuant to subdivision (c) of Section 5352.~~

~~(b) The officer providing conservatorship investigation shall recommend in his or her report any of the additional powers of a conservator set forth in Section 2591 of the Probate Code if the needs of the individual patient, or his or her estate, require those powers. In making this determination, the officer providing conservatorship investigation shall consult with the professional person who recommended conservatorship pursuant to subdivision (a) or (b) of Section 5352, or the physician or psychologist who presented medical evidence to the court pursuant to subdivision (c) of Section 5352.~~

~~SECTION 1. Section 5350.5 is added to the Welfare and Institutions Code, to read:~~

~~5350.5. (a) If a conservatorship has already been established under the Probate Code, the court, in a proceeding under the~~

1 *Probate Code, after an evidentiary hearing attended by the*  
2 *conservatee, unless the conservatee waives presence, and the*  
3 *conservatee's counsel, may refer the conservatee, in consultation*  
4 *with a licensed physician or licensed psychologist satisfying the*  
5 *conditions of subdivision (c) of Section 2032.020 of the Code of*  
6 *Civil Procedure providing evaluation or treatment to the*  
7 *conservatee, for an assessment by the local mental health system*  
8 *or plan to determine if the conservatee has a treatable mental*  
9 *illness, including whether the conservatee is gravely disabled as*  
10 *a result of a mental disorder or impairment by chronic alcoholism,*  
11 *and is unwilling to accept, or is incapable of accepting, treatment*  
12 *voluntarily. If the conservatee cannot afford counsel, the court*  
13 *shall appoint counsel for him or her pursuant to Section 1471 of*  
14 *the Probate Code.*

15 *(b) The local mental health system or plan shall file a copy of*  
16 *the evaluation with the court that made the referral for evaluation*  
17 *in a proceeding under the Probate Code.*

18 ~~SEC. 5.~~

19 *SEC. 2.* If the Commission on State Mandates determines that  
20 this act contains costs mandated by the state, reimbursement to  
21 local agencies and school districts for those costs shall be made  
22 pursuant to Part 7 (commencing with Section 17500) of Division  
23 4 of Title 2 of the Government Code.